

ORIGINAL

FILED  
U.S. DIST. COURT  
AUGUSTA DIV

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA *24* 4 54 PM '68  
AUGUSTA DIVISION

CLERK  
SO. DIST. OF GA

HERBERT E. BRETT, DAVID  
HANNAH, WAYNE D. HATTAWAY,  
and JERRY O. HUDSON,

Plaintiffs,

\* CIVIL ACTION NO.

\* CV 193-144

v.

JEFFERSON COUNTY,  
GEORGIA, and CHARLES GARY  
HUTCHINS, individually  
and in his official  
capacity as SHERIFF of  
JEFFERSON COUNTY, GEORGIA,

Defendants.

ORDER

Following this Court's Order granting summary judgment in favor of Defendants, the Eleventh Circuit Court of Appeals affirmed in part, vacated in part, and remanded this case for additional fact finding. In its opinion, the Eleventh Circuit stated that

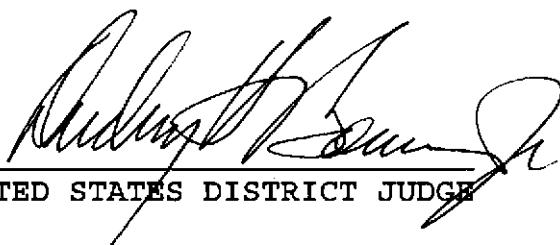
The district court must decide on remand which balancing test to apply, Pickering or Elrod-Branti. Choosing the proper test, however, turns on certain predicate factual issues which are in dispute: the basis for Hutchins' failure to rehire Brett, Hannah, Hattaway, and Hudson and the nature of the political activity in which the

former deputy sheriffs participated. Thus, we remand for additional fact finding so that the district court can decide which test properly to apply in the First Amendment analysis.

Brett v. Jefferson County, 123 F.3d 1429, 1433 (11th Cir. 1997). The Eleventh Circuit determined that the following factual issues are in dispute: (1) the existence of negative campaigning; (2) alleged substance abuse by Plaintiffs; (3) the futility of Plaintiffs' application; (3) the basis for Hutchins' failure to rehire Plaintiffs; and (5) the nature of the Plaintiffs' political activity.

The parties are hereby invited to inform the Court in ten (10) days from the date of this Order whether any of the necessary facts can be established through additional affidavits or stipulations, and if the case is otherwise ripe to proceed to trial.

ORDER ENTERED at Augusta, Georgia, this 24/8 day of February, 1998.

  
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UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
Southern District of Georgia

Case Number: 1:93-cv-00144  
Date Served: February 24, 1998  
Served By: Emmie S. Flanders *esb*

Attorneys Served:

Margaret E. Sanders, Esq. ✓  
Michael Allen O'Quinn, Esq. ✓  
Megan Gideon, Esq.  
Marcia Borowski, Esq. ✓  
John Paul Batson, Esq. ✓

Copy placed in Minutes

Copy given to Judge

Copy given to Magistrate